

## REMARKS

By an Office Action dated October 8, 2003 in the file of this application, the Examiner rejected any of the claims of this application based on a variety of grounds under 35 U.S.C. §112, first paragraph. Based on this submission reconsideration of the merits of this patent application is respectfully requested.

The Examiner has previously acknowledged that the invention as claimed in this application is free of prior art. The issue is the breadth of claims to which the applicant is allowed by virtue of this novel technology. The applicant continues to believe that the Examiner has too narrow a view of the subject matter of this invention and a reconsideration of the rejections under §122 is respectfully requested in view of the amendments to the claims made above.

The Examiner objected to the previous language in the claim which recited that the MinD protein had 80% sequence identity with SEQ ID NO:2. The Examiner objected to that language on the grounds of new matter, in spite of the fact that 80% language appeared in the specification at page 7, line 8. However, the Examiner acknowledges that the specification does show MinD genes which are 92% identical in protein sequence. That language is also found in the specification on page 7, at lines 7 to 11. Therefore, in order to find allowable subject matter for the broader claims of this application, the applicant has amended the independent claims of the application to recite the 92% figure. It is believed that this recitation cannot be considered new matter and would therefore overcome the rejection under 35 U.S.C. §112, first paragraph, based on written description.

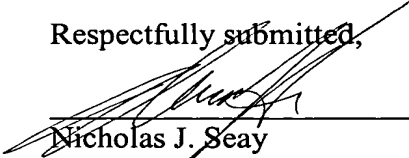
It is also believed that the change to the 92% sequence identity requirement will overcome the rejection under §112, first paragraph, for lack of enablement. The Examiner has conceded that the Tagetes protein is 92% sequence identity to the Arabidopsis protein while still objecting that broader sequence identity was not enabled by the application. It is hoped that limiting the proteins covered by the claims of the present invention to at least 92% sequence identity will overcome this rejection.

Similar, the Examiner had similar language in the third rejection under §112, first paragraph. It is thus hoped that amending the application to recite the 92% level of sequence identity will overcome that rejection as well.

One new claim has been presented by this response. That is Claim 30. Claim 30 is intended to make it clear that allowable subject matter is found for a transgenic plant which has the protein specified by the amino acid sequence in SEQ ID NO:2. It is believed this subject matter is clearly definite, enabled, and patentable over the prior art.

Wherefore reconsideration of the merits of this patent application is respectfully requested. A separate petition for extension of time and RCE is submitted herewith so that this response will be considered as timely filed.

Respectfully submitted,



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